

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

AMY PICCININO, et al.)	
)	
Plaintiffs,)	
)	
vs.)	Case No.: 4:18-cv-01197
)	
PAPA JOHN'S USA, INC.,)	
)	
Defendant.)	

**DEFENDANT PAPA JOHN'S USA, INC.'S
MOTION FOR LEAVE TO FILE ANSWER OUT OF TIME**

COMES NOW Defendant PAPA JOHN'S USA, INC., by and through its undersigned counsel, and moves this honorable Court for an Order granting Defendant leave to file its Answer out of time, and as the basis therefore, states as follows:

1. Plaintiffs filed a Petition in the Circuit Court for St. Louis County, Missouri on or about June 13, 2018 and served Defendant's registered agent with process on June 21, 2018.
2. Defendant timely filed a Notice of Removal on July 20, 2018.
3. Defendant conferred with Plaintiffs and provided all of the relevant pleadings that were filed in both this court and state court on July 20, 2018.
4. Defendant's lead counsel intended for an associate to prepare and file an Answer to the Plaintiffs' Petition concurrent with the filing of the removal pleadings on July 20, 2018 but failed to adequately communicate that instruction to the associate.
5. Under the mistaken belief that the undersigned counsel's associate had already prepared and filed an Answer to the Plaintiffs' Petition, no further action was taken to respond to the allegations made by Plaintiff's Petition.

6. “Fed.R.Civ.P. 6(b) authorizes courts to accept late filings where the failure to timely file is the result of ‘excusable neglect.’” Precinct, Inc. v. MWS, LLC, 2014 U.S. Dist. LEXIS 102400; 2014 WL 3734276.

7. “The determination of whether neglect ‘is excusable is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.’” Id., citing Chorosevic v. MetLife Choices, 600 F.3d 934, 946 (8th Cir. 2010).

8. “Excusable neglect is an ‘elastic concept’ that empowers courts to accept, ‘where appropriate . . . late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.’” Id.

9. “In making this determination, the Court considers a number of factors, including (1) the possibility of prejudice to the non-moving party; (2) the length of delay and its potential impact on the proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the party acted in good faith.” Id.

10. Plaintiffs originally filed suit against defendant in 2016 in St. Louis County Circuit Court, and Defendant answered the suit asserting defenses and denying liability. That suit was dismissed without prejudice by the court later that year after Plaintiffs’ attorney withdrew and Plaintiffs failed to appear at the court’s scheduling settings.

11. Plaintiffs are aware of Defendant’s defenses and that Defendant denies liability for the claims asserted by Plaintiffs.

12. No discovery has begun in this case, and neither party has yet made any initial disclosures.

13. The due date for the Defendant’s Answer was Friday, July 27, 2018 pursuant to Fed.R.Civ.P. 81(c)(2).

14. Plaintiffs will not be prejudiced by the Court extending the time for Defendant to Answer the Plaintiffs' suit.

15. The length of Defendant's delay is minimal—two business days and a weekend.

16. Defendant has acted in good faith and merely failed to timely file the Answer due to a miscommunication within its counsel's office.

17. Defendant has attached its proposed Answer to Plaintiffs' Petition hereto as **Exhibit A** and requests that this honorable Court accept it for filing and deem it filed concurrent with the filing of this motion.

WHEREFORE, Defendant Papa John's USA, Inc., respectfully requests this Court accept its Answer and to deem the same filed as of the date of this motion, and further requests any and all other relief that the Court deems just and appropriate under the premises.

Respectfully submitted,

GALLOWAY, JOHNSON, TOMPKINS,
BURR & SMITH, P.C.

/s/ James C. Morris

James C. Morris, #53074

Katie C. Battisti, #64309

7800 Forsyth Blvd., Suite 600

St. Louis, Missouri 63105

Telephone: (314) 725-0525

Facsimile: (314) 725-7150

jmorris@gallowaylawfirm.com

kbattisti@gallowaylawfirm.com

*Attorneys for Defendant Papa John's USA,
Inc.*

CERTIFICATE OF SERVICE

The undersigned certifies that on the 31st day of July, 2018, a copy of the foregoing was served upon all counsel of record via ECF, and that a copy of the foregoing was served via regular U.S. Mail and via e-mail upon self-represented plaintiffs:

Amy Piccinino,
P. R., a minor, by her natural mother, Amy Piccinino, and
Jeffery Porter,
4843 Hannover Avenue
St. Louis, Missouri 63123
foreseethefuture@live.com
jeffporter604@gmail.com,
Pro Se Plaintiffs

/s/ James C. Morris